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VIA FACSIMILE AND EMAIL
Mr. Cleveland H. Marsh
Director, Commodity Procurement Policy & Analysis Division
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Ave., SW – Room 5755-S
Washington, D.C. 20250-0512

Re: Proposed Rule / RIN 0560-AH39
Commodity Credit Corporation
Procurement of Commodities for Foreign Donation

Dear Mr. Marsh:

On behalf of our clients, Central Gulf Lines, Inc. (Central Gulf) and Waterman Steamship Corporation (Waterman), we are writing in response to the above-referenced Commodity Credit Corporation (CCC) notice of proposed rulemaking (NPRM) published in the *Federal Register* on December 16, 2005. In that NPRM, the CCC seeks public comment regarding the proposed new procedures to be used in the evaluation of bids for the procurement of commodities for donation overseas. In particular, the CCC proposes to amend its existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest-landed cost options in connection with the procurement of commodities for shipment overseas. Central Gulf and Waterman are most concerned that the adoption and implementation of the proposed new procedures by the CCC may ignore applicable cargo preference laws and policies established under the authority of Title II of the Agricultural Trade Development and Assistance Act of 1954 ("P. L. 480"), the Food for Progress Program, the McGovern-Dole International Food for Education and Child Nutrition Program, and other cargo preference programs.

U.S.-Flag Ocean Service Priorities

In the NPRM, the CCC is virtually silent about the need to comply with applicable U.S.-flag cargo preference laws and policies for the shipment of P.L.480 and other government-sponsored cargoes. Though the CCC described in some detail the new procedures that it proposes to follow in the commodity bid evaluation process, the agency avoids any real discussion in the NPRM about the vital need to ensure that the adoption and implementation of new CCC procedures will comply with applicable cargo preference requirements for the priority use of U.S.-flag commercial vessels. Accordingly, the CCC must ensure, through applicable rules, policies and procedures, that it will strictly adhere to U.S.-flag commercial vessel priorities properly established by the U.S. Maritime Administration (MarAd) for the carriage of government-sponsored cargoes.

On this cargo preference issue, it should be pointed out that the only basis under which a "priority two" carrier (one using a combination of U.S.-flag and foreign-flag vessels for a given transport) should be awarded the shipment of government-sponsored cargo is if there is no "priority one" space available (space that is totally U.S.-flag from loading to delivery) to carry the total quantity of cargo offered in a given invitation for bid. Clearly, a "priority one" U.S.-flag carrier must be given award preference over a "priority three" foreign-flag carrier as well.

Cargo Transport

In any final regulations promulgated by the CCC in this rulemaking, the agency must require that all vessel carriers specify the maximum cargo that they can transport under a specific invitation for bid. Carriers also must be required to offer freight rates for all bid-points from which they can provide service. Furthermore, when a properly offered cargo preference freight rate is used to establish the lowest landed cost for a particular cargo transport, the CCC procedures must require that the government-sponsored cargo be shipped using the carrier that offered that applied freight rate. Without these requirements, the Kansas City Commodity Office (KCCO), affected federal agencies, and so-called "cooperating sponsors" for the government-sponsored shipments will be able to continue to manipulate the commodity bid and freight rate process to the detriment of those carriers that have fully described their freight capacities and committed their freight rates in response to particular invitations for bids.

Program Administration

Upon the award of the commodity bid by the KCCO and booked freight by the "cooperating sponsor" of the shipment, the new CCC procedures should require that all commodity prices and freight rates for each invitation be made publicly available within seven (7) days after the bid award and freight fixture. Such publication of the prices and rates will ensure proper accountability in the administration of the affected cargo shipping programs.

Conclusion

In the adoption of any new CCC procedures for the procurement and shipment of commodities for foreign donation, Central Gulf and Waterman again want to ensure that any and all applicable cargo preference laws and regulations are properly applied and enforced. The cargo preference laws are designed to maximize the participation of U.S.-flag vessels in the commodities programs administered by the CCC, and are critical to the preservation of a vital U.S.-flag fleet and for the employment of thousands of American merchant mariners. Given the critical need for continued adherence to cargo preference requirements, Central Gulf and Waterman request that the CCC closely work with MarAd and the U.S.-flag maritime industry to ensure that cargo preference requirements for the commodity programs are effectively and properly administered.

Central Gulf and Waterman appreciate your consideration of these comments.

Sincerely,

John J. Jaskot, Counsel
Central Gulf Lines, Inc.
Waterman Steamship Corporation